



January 23, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication: MD Docket No. 18-3

Dear Ms. Dortch:

ITTA submits this letter to raise one issue for the Commission's consideration as it prepares to vote at its January 30, 2018 open meeting on the creation of an Office of Economics and Analytics (OEA).¹

ITTA applauds the initiative to bolster the profile and roles of economic and data analysis at the Commission via the establishment of OEA. ITTA shares the belief that integrating these disciplines into the Commission's various rulemakings and other actions in a more comprehensive and thorough manner² will enhance the Commission's policy-making function and its work product, to the ultimate benefit of the American public.³

In FCC proceedings lending themselves to particularly rigorous economic and/or data analysis, such as rulemaking proceedings and large transactions, participants in the proceeding may submit extensive showings to support their comments or other presentations. Typically, these analyses are prepared by third-party consultants hired by the participant in the proceeding, and often these showings span dozens, if not hundreds, of pages.⁴ In other words, a participant

¹ *Establishment of the Office of Economics and Analytics*, MD Docket No. 18-3, Order, FCC-CIRC1801-04 (Public Draft Jan. 9, 2018) (Draft Order).

² *See id.* at 1, para. 1.

³ *See* FCC, Plan for Office of Economics and Analytics (OEA): Recommendations and Report to Chairman Ajit Pai at 3 (2018), https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0109/DOC-348640A1.pdf (OEA Plan).

⁴ *See, e.g., Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, FCC 17-166, at 183, para. 310 n.1111 (2018) (citing Letter from Thomas J. Navin, Counsel to Corning Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. A (filed Oct. 20, 2017), <https://ecfsapi.fcc.gov/file/1020823627435/Corning%20Ex%20Parte.pdf> (Hal Singer, Ed Naef, Alex King, Economists Incorporated and CMA Strategy Consulting, *Assessing the Impact of Removing Regulatory Barriers on Next Generation Wireless and Wireline Broadband Infrastructure Investment* at 35-45 (June 2017) (discussing the impact of additional investments on spillover effects and economic output)); *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership, For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6356, para. (continued . . .)

in such an FCC proceeding that seeks to engage in the level of economic and/or data analysis entailed, frequently must expend enormous resources in order to be able to do so. The pragmatic result, unfortunately, is that in some cases smaller companies are precluded from engaging on the economics- and/or data-intensive issues in the proceeding, for the fundamental reason that they do not have such resources to devote to the endeavor.

The Draft Order focuses primarily on OEA's structure and high-level mission. Similarly, the OEA Plan emphasized proposals related to structure, internal processes, and norms and culture of OEA. The OEA Plan evinces cognizance on the part of the working group that formulated it of the need to ensure that the Commission's economic analysis properly considers a proposed rule's effects on small businesses.⁵ However, nowhere in the Draft Order or the OEA Plan is there evidence that the Commission has heretofore considered, as it prepares to elevate the roles of economics and data analysis in its work, how to facilitate small businesses having an effect on those facets of the Commission's work.

The Draft Order specifies that one of OEA's charges is to "conduct long-term research on ways to improve the Commission's policies and processes" related to economic analysis, auctions, and best practices for data use.⁶ Pursuant to this charge, ITTA urges the Commission and its new OEA to consider actively how to accommodate the lesser resources of smaller businesses, so that they, too, can engage on the economics- and data-intensive issues that typically play a large role – and, going forward, are destined to play an even larger role – in the most prominent FCC proceedings.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

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63 n.179 (2016) (citing Letter from Markham C. Erickson, Counsel for INCOMPAS, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-149, Attach., Economic Analysis of the Impact of the Proposed Merger of Charter, Time Warner Cable, and Bright House Networks on Video Programming Prices and Broadband Entry and Competition, Evans Declaration I, at 38-40, paras. 76-80 (filed Jan. 15, 2016), <https://ecfsapi.fcc.gov/file/60001406054.pdf> (64 page economic analysis)).

⁵ See, e.g., OEA Plan at 5, 16.

⁶ Draft Order at 2, para. 3.